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To: Microsoft ATR
Date: 12/9/01 2:14pm
Subject: Microsoft Settlement

Renata B. Hesse
Antitrust Division
U.S. Dept. of Justice
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Subject: Microsoft Settlement - Consumer's Objection to Proposed Judgment

By e-mail dated Nov. 28, 2001, I previously informed you of my bases for objecting to the above-referenced "Proposed Judgment". For your reference, I have included below a copy of the contents of my prior e-mail.

I have since reviewed the "Remedial Proposals" filed with the District Court on December 7, 2001, by the Plaintiff Litigating States. Because the "Proposed Judgment" fails to address in any effective manner my concerns expressed in my e-mail of Nov. 28, and because the "Remedial Proposals" do address these concerns, I ask that the "Proposed Judgment" be rejected and that the "Remedial Proposals" be substituted in its place and I ask that the District Court take all steps necessary to make the "Remedial Proposals" the final judgment in this proceeding.

Sincerely,

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REPETITION BELOW OF PRIOR E-MAIL OF NOVEMBER 28, 2001

As a consumer, I write to object to the proposed judgment because the judgment does not address in a positive manner the most important violation by Microsoft of the antitrust law. The proposed judgment, instead, expressly condones Microsoft's continued violation of the law.

The appellate court specifically held that "Microsoft's... commingling of browser and operating system code constitute(s) exclusionary conduct, in violation of Section 2." [U.S. v. Microsoft Corp., June 28, 2001, No.

00-5212, p. 40, first paragraph of part II.B.2.b.] Contrary to this explicit holding, the proposed judgment specifically provides that "(t)he software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion." [Revised Proposed Final Judgment, part VI.U]. Thus the proposed judgment expressly authorizes Microsoft to continue those acts that the appellate court specifically held violated Section 2 of the anti-trust law.

Microsoft continues to expand the strength and breadth of its monopoly over the PC operating system by absorbing into the software, which Microsoft calls its " Windows Operating System", functions performed by its competitor's applications and utilities. Because Microsoft sells its "operating system" as a single product, each time that Microsoft adds to its "operating system" a function that previously was performed by the competitor's product, consumer demand for the competitor's product ceases and the competitor is destroyed. Again and again, Microsoft has used this weapon to leverage its monopoly power in the Window's operating system to wipe out its competitors and its competitor's software products while, at the same time, increasing the strength and breadth of its monopoly. The vehemence with which Microsoft objects to any limitation on its use of this weapon evidences Microsoft's recognition of the critical importance of this weapon to Microsoft's continuation and expansion of its monopoly.

Because Microsoft has monopoly power in its "Windows Operating System" I, as a consumer, am forced to purchase the Windows Operating System in order to operate my computer. Each time that Microsoft expands the breadth of its "operating system" by absorbing into it functions previously performed by other software, I lose the freedom to purchase such functionality from other sources, and whether or not I need such additional functionality, my computer is burdened by the additional software in Microsoft's "operating system" that performs these functions.

If the judgment does not prevent Microsoft from commingling its "Windows operating system" with software that is added to absorb functions previously provided by Microsoft's competitors, Microsoft will use this weapon to expand the breadth of its monopoly, to destroy its competitors, and to harm the consumers, all in the manner explicitly held by the appellate court to violate the law. If you do not revise the judgment to forbid Microsoft's absorption into the "Windows Operating System" of functions performed by competitors' software, the legal action against Microsoft will have failed.

Microsoft claims that it wants the freedom to "innovate", i.e. to introduce something new for the first time. Microsoft does not innovate, it instead imitates. Microsoft does not create new products and functionality but, instead, copies the functionality of its competitor's products into its "Windows Operation System". Because

Microsoft has monopoly power, its "imitation" of competitors' products harms us all and violates the law. If Microsoft wants the freedom to "imitate", let it imitate with software that is separate from the "operating system".

I can think of no benign explanation as to why the most important provision in the proposed judgment was tucked away at the very end of a long list of Definitions. The clause that would "give away the farm" to Microsoft should, instead, be displayed in bold letters at the beginning of the proposed judgment under the caption: "GRANT TO MICROSOFT OF LICENSE TO CONTINUE TO VIOLATE THE LAW".

Sincerely,

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